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1977

# Gillham Advertising Agency I Inc. v. Robert K. Ipson : Brief of Plaintiff-Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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GILLHAM ADVERTISING AGENCY, INC.,	:	
	:	
Plaintiff-Respondent,	:	
	:	Case No. 14843
-vs-	:	
	:	
ROBERT K. IPSON,	:	
	:	
Defendant-Appellant.	:	

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BRIEF OF PLAINTIFF-RESPONDENT

---

Appeal from Judgment of the  
Third District Court for  
Salt Lake County  
Honorable Marcellus K. Snow

---

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FILED

FEB 14 1977

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Clerk, Supreme Court, Utah

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ROBERT K. IPSON,	:	
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Defendant-Appellant.	:	

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BRIEF OF PLAINTIFF-RESPONDENT

-----  
STATEMENT OF THE NATURE OF THE CASE

This is an action on an "Agreement" for principal, interest and attorney's fees.

DISPOSITION IN LOWER COURT

The lower court granted Respondent's Motion for Summary Judgment.

RELIEF SOUGHT ON APPEAL

The Respondent seeks affirmation of the Summary Judgment.

STATEMENT OF THE FACTS

Gillham Advertising Agency, Inc. (hereinafter "Gillham") is engaged in the advertising business. (R. 2) Robert K. Ipson, (hereinafter "Ipson") returned to Utah July 1, 1973 to run a motor racetrack. (R. 19, Deposition, p. 8, line 1)

There was a Nevada corporation by the name of Bonneville Raceways Park, with which Ipson was affiliated. (R. 19, Deposition, p. 17, lines 9, 10, 11) When he came to Utah, he

tried to qualify the Nevada corporation in the State of Utah. (R. 19, Deposition, p. 17, lines 12 through 14) The Utah Secretary of State refused to qualify the Nevada corporation because there was already in Utah an existing Utah corporation by exactly the same name. (R. 19, Deposition, p. 17, lines 15 through 21) The principals of the Utah corporation were Douglas Haynes, Howard H. Haynes, and Bruce White. (R. 19, Deposition, p. 10, lines 2, 3) They, through the Utah corporation, owned the racetrack. (R. 19, Deposition, p. 9, lines 24, 25) Ipson acquired a lease to the racetrack premises, personally. (R. 19, Deposition, p. 9, line 14) Ipson was going to have others in the operation with him, but it did not materialize. (R. 19, Deposition, p. 9, lines 17 and 18) Ipson began operating the racetrack and contacted Gillham Advertising to promote the racing activities. (R. 19, Deposition, p. 11) Gillham conducted advertising and advanced monies in connection therewith. (R. 4, 5, 6) When the advertising fees were not paid, a written Agreement was prepared covering the fees, and setting the time and conditions of payment. (R. 4, 5, 6) Ipson executed the Agreement by signing on the typed line, "Bonneville Raceways by Robert K. Ipson, President, January 26, 1976." (R. 6)

Subsequently, the Agreement was not paid, and Gillham commenced this action. (R. 2)

Ipson, at his deposition, said that he had caused a corporation to be formed in the State of Utah by the name of MSI and Associates in 1963. (R. 19, Deposition, p. 16,

line 9) He claims that the Nevada corporation, Bonneville Raceways Park, was doing business in Utah as MSJ and Associates, a Utah corporation. (R. 19, Deposition, p. 17, 18)

Bonneville Raceways Park, a Nevada corporation, was suspended in Nevada. (R. 19, Deposition, p. 16)

Gillham brought the action against Ipson d/b/a Bonneville Raceways. (R. 2) Ipson answered that the debt was a corporate obligation and not a personal obligation. (R. 9)

After Ipson was deposed, Gillham's Motion for Summary Judgment was granted (R. 25, 26), and Ipson has appealed from that Summary Judgment. (R. 30)

#### ARGUMENT

THERE WERE NO MATERIAL FACTS IN DISPUTE AND RESPONDENT WAS ENTITLED TO JUDGMENT AS A MATTER OF LAW.

Rule 56 of the Utah Rules of Civil Procedure, provides for Summary Judgment, and in pertinent part states:

" The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the Affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law."

Based upon the deposition of Ipson, and viewing it in a light most favorable to him, there is no material fact in dispute. He had a Nevada corporation by the name of Bonneville Raceways Park. He came to Utah in 1973 and attempted to qualify that Nevada corporation in Utah, but

could not because there was an existing Utah corporation by the exact same name. He then acquired a lease from the Utah corporation in his own name, "personally". He ran the track and obtained advertising services from Gillham. There is absolutely no mention of MSJ and Associates, a Utah corporation on the written agreement for payment.

Ipson thinks that the Nevada corporation, Bonneville Raceways Park, was doing business in Utah as a Utah corporation MSJ and Associates. This is a legal anomaly. A foreign corporation does not do business in Utah in the form of a Utah corporation, it is a non sequitur. If the foreign corporation does business in Utah, it should qualify in Utah as a foreign corporation.

Furthermore, the Nevada corporation, Bonneville Raceways Park, was suspended. The result of suspension, according to Nevada law, is that "the corporation forfeits its right to transact business within the state." Nevada Revised Statutes 78.170 and 80.150. The Nevada Secretary of State compiles a list of defaulting corporations, publishes it, and if the fees and penalties are not paid by the first Monday in March, the right to carry on business is also forfeited, and the charters of such defaulting domestic corporations are revoked. Nevada Revised Statutes 78.175 and 80.160.

Ipson attempted to act as a corporation without authority and is, therefore, personally liable to Gillham.

Utah Code Annotated, 1953, as amended provides:

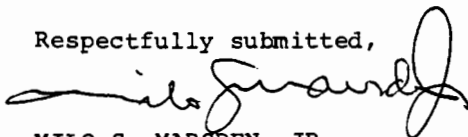


"16-10-139. Unauthorized assumption of corporate power -- Liability. -- All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

CONCLUSION

The Summary Judgment should be affirmed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Milo S. Marsden, Jr.", with a large, stylized flourish at the end.

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